

ZIBENDOU RICHARDSON,

Plaintiff

## V. CONCLUSIONS

FIRST CREDIT SERVICES, INC.,

Defendant

**Case No.:**

## COMPLAINT AND DEMAND FOR JURY TRIAL

**(Unlawful Debt Collection Practices)**

## COMPLAINT

ZIBENDOU RICHARDSON ("Plaintiff"), by his attorneys, KIMMEL & SILVERMAN, P.C., alleges the following against FIRST CREDIAT SERAVICES, INC. ("Defendant"):

## INTRODUCTION

1. Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA").

## JURISDICTION AND VENUE

2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states that such actions may be brought and heard before “any appropriate United States district court

1 without regard to the amount in controversy,” and 28 U.S.C. § 1331 grants this court original  
2 jurisdiction of all civil actions arising under the laws of the United States.

3 3. Defendant conducts business and has an office in the State of New Jersey and  
4 therefore, personal jurisdiction is established.

5 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1).

6 5. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.

7  
8 **PARTIES**

9  
10 6. Plaintiff is a natural person residing in New Britain, Connecticut, 06053.

11 7. Plaintiff is a “consumer” as that term is defined by 15 U.S.C. § 1692a(3).

12 8. Defendant is a national debt collection company with corporate headquarters  
13 located at One Woodbridge Center, Suite 410, Woodbridge, New Jersey 07095.

14 9. Defendant is a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6),  
15 and repeatedly contacted Plaintiff in an attempt to collect a debt.

16 10. Defendant acted through its agents, employees, officers, members, directors,  
17 heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

18  
19 **PRELIMINARY STATEMENT**

20 11. The Fair Debt Collection Practices Act (“FDCPA”) is a comprehensive statute,  
21 which prohibits a catalog of activities in connection with the collection of debts by third parties.  
22 See 15 U.S.C. § 1692 *et seq.* The FDCPA imposes civil liability on any person or entity that  
23 violates its provisions, and establishes general standards of debt collector conduct, defines abuse,  
24 and provides for specific consumer rights. 15 U.S.C. § 1692k. The operative provisions of the  
25 FDCPA declare certain rights to be provided to or claimed by debtors, forbid deceitful and

1 misleading practices, prohibit harassing and abusive tactics, and proscribe unfair or  
2 unconscionable conduct, both generally and in a specific list of disapproved practices.

3       12. In particular, the FDCPA broadly enumerates several practices considered  
4 contrary to its stated purpose, and forbids debt collectors from taking such action. The  
5 substantive heart of the FDCPA lies in three broad prohibitions. First, a “debt collector may not  
6 engage in any conduct the natural consequence of which is to harass, oppress, or abuse any  
7 person in connection with the collection of a debt.” 15 U.S.C. § 1692d. Second, a “debt  
8 collector may not use any false, deceptive, or misleading representation or means in connection  
9 with the collection of any debt.” 15 U.S.C. § 1692e. And third, a “debt collector may not use  
10 unfair or unconscionable means to collect or attempt to collect any debt.” 15 U.S.C. § 1692f.  
11 The FDCPA is designed to protect consumers from unscrupulous collectors, whether or not there  
12 exists a valid debt, broadly prohibits unfair or unconscionable collection methods, conduct which  
13 harasses, oppresses or abuses any debtor, and any false, deceptive or misleading statements in  
14 connection with the collection of a debt.  
15

16       13. In enacting the FDCPA, the United States Congress found that “[t]here is  
17 abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many  
18 debt collectors,” which “contribute to the number of personal bankruptcies, to marital instability,  
19 to the loss of jobs, and to invasions of individual privacy.” 15 U.S.C. § 1692a. Congress  
20 additionally found existing laws and procedures for redressing debt collection injuries to be  
21 inadequate to protect consumers. 15 U.S.C. § 1692b.  
22

23       14. Congress enacted the FDCPA to regulate the collection of consumer debts by debt  
24 collectors. The express purposes of the FDCPA are to “eliminate abusive debt collection  
25 practices by debt collectors, to insure that debt collectors who refrain from using abusive debt

1 collection practices are not competitively disadvantaged, and to promote consistent State action  
2 to protect consumers against debt collection abuses.” 15 U.S.C. § 1692e.  
3

#### 4 **FACTUAL ALLEGATIONS**

5 15. At all relevant times, Defendant was attempting to collect two (2) alleged  
6 consumer debts from Plaintiff.  
7

8 16. The alleged debts at issue arose out of transactions, which were primarily for  
9 personal, family, or household purposes.

10 17. Beginning in or around June 2010 and continuing until September 2010,  
11 Defendant, its agents, employees, and servants, engaged in debt collection activities seeking  
12 payment from Plaintiff.

13 18. Defendant and its employees identified as “Mr. Wilson,” “Amy” and “Fred,”  
14 harassed Plaintiff in an attempt to collect the alleged debt.

15 19. Defendant, its employees and servants harassed Plaintiff by making continuous  
16 calls to his cellular telephone number, home telephone and work telephone number.

17 20. Plaintiff received phone calls and voice messages from Defendant on a number of  
18 occasions from the following phone numbers (877) 624-7184, (800) 580-3912, and (855) 272-  
19 3510. The undersigned has confirmed that these numbers belong to Defendant.  
20

21 21. The alleged debt in question was for a gym membership with “Blue Sky” that had  
22 lapsed.

23 22. Plaintiff asked Defendant if he could pay to bring the gym membership up to a  
24 “current” status; however, Defendant never got back to Plaintiff.

25 23. Thereafter, Plaintiff contacted “Big Sky” directly and was allowed to bring his  
gym membership status up to “current” by paying an agreed upon amount with “Big Sky.”

1           24. Plaintiff informed Defendant that the debt had been paid and not to contact him  
2 anymore.

3           25. However, despite being current with "Blue Sky" and having informed Defendant  
4 to not contact him further as the debt was paid, Defendant continued to contact Plaintiff in  
5 regards to the alleged debt.

6           26. Plaintiff retained counsel, and on October 15, 2010 a Letter of Representation  
7 was sent to Defendant; the letter further advised Defendant to cease any further communications  
8 with Plaintiff. See Exhibit "A".

9           27. After the October 15, 2010 correspondence was sent, Defendant's harassment  
10 continued, contacting Plaintiff and Plaintiff's wife to discuss the alleged debt.

11           28. Defendant's actions in attempting to collect the alleged debt were harassing,  
12 abusive and highly deceptive.  
13

14  
15                           **CONSTRUCTION OF APPLICABLE LAW**

16           29. The FDCPA is a strict liability statute. Taylor v. Perrin, Landry, deLaunay &  
17 Durand, 103 F.3d 1232 (5th Cir. 1997). "Because the Act imposes strict liability, a consumer  
18 need not show intentional conduct by the debt collector to be entitled to damages." Russell v.  
19 Equifax A.R.S., 74 F. 3d 30 (2d Cir. 1996); see also Gearing v. Check Brokerage Corp., 233  
20 F.3d 469 (7th Cir. 2000) (holding unintentional misrepresentation of debt collector's legal status  
21 violated FDCPA); Clomon v. Jackson, 988 F. 2d 1314 (2d Cir. 1993).

22           30. The FDCPA is a remedial statute, and therefore must be construed liberally in  
23 favor of the debtor. Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235 (W.D. Wash. 2006). The  
24 remedial nature of the FDCPA requires that courts interpret it liberally. Clark v. Capital Credit  
25 & Collection Services, Inc., 460 F. 3d 1162 (9th Cir. 2006). "Because the FDCPA, like the

1 Truth in Lending Act (TILA) 15 U.S.C §1601 *et seq.*, is a remedial statute, it should be  
 2 construed liberally in favor of the consumer.” Johnson v. Riddle, 305 F. 3d 1107 (10th Cir.  
 3 2002).

4 31. The FDCPA is to be interpreted in accordance with the “least sophisticated”  
 5 consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168 (11th Cir. 1985); Graziano  
 6 v. Harrison, 950 F. 2d 107 (3<sup>rd</sup> Cir. 1991); Swanson v. Southern Oregon Credit Service, Inc.,  
 7 869 F.2d 1222 (9th Cir. 1988). The FDCPA was not “made for the protection of experts, but for  
 8 the public - that vast multitude which includes the ignorant, the unthinking, and the credulous,  
 9 and the fact that a false statement may be obviously false to those who are trained and  
 10 experienced does not change its character, nor take away its power to deceive others less  
 11 experienced.” Id. The least sophisticated consumer standard serves a dual purpose in that it  
 12 ensures protection of all consumers, even naive and trusting, against deceptive collection  
 13 practices, and protects collectors against liability for bizarre or idiosyncratic interpretations of  
 14 collection notices. Clomon, 988 F. 2d at 1318.

# 17 COUNT I

## 18 DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT

19  
 20 32. In its actions to collect a disputed debt, Defendant violated the FDCPA in one or  
 21 more of the following ways:

- 22 a. Defendant violated of the FDCPA generally;
- 23 b. Defendant violated § 1692(c)(a)(2) of the FDCPA by contacting Plaintiff with  
 24 knowledge Plaintiff is represented by counsel and with knowledge of that  
 25 attorney’s name and address;

- c. Defendant violated § 1692c(c) of the FDCPA by failing to cease further communication with the Plaintiff after receiving notice to cease communication;
- d. Defendant violated § 1692d of the FDCPA by harassing Plaintiff in connection with the collection of an alleged debt;
- e. Defendant violated § 1692e of the FDCPA by using false, deceptive, or misleading representations or means in connection with the collection of a debt;
- f. Defendant violated § 1692e(10) of the FDCPA by using false representations or deceptive means to collect or attempt to collect a debt;
- g. Defendant violated § 1692f of the FDCPA by using unfair and unconscionable means with Plaintiff to collect or attempt to collect a debt;
- h. Defendant violated § 1692g of the FDCPA by failing to send written notification, within five (5) days after its initial communication with Plaintiff, advising Plaintiff of her rights to dispute the debt or request verification of the debt;
- i. Defendant acted in an otherwise deceptive, unfair and unconscionable manner and failed to comply with the FDCPA.

WHEREFORE, Plaintiff, ZIBENDOU RICHARDSON, respectfully prays for a judgment as follows:

- a. All actual compensatory damages suffered pursuant to 15 U.S.C. § 1692k(a)(1);

- 1 b. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant to  
2 15 U.S.C. § 1692k(a)(2)(A);  
3 c. All reasonable attorneys' fees, witness fees, court costs and other litigation  
4 costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3); and  
5 d. Any other relief deemed appropriate by this Honorable Court.  
6

7 **DEMAND FOR JURY TRIAL**

8 PLEASE TAKE NOTICE that Plaintiff, ZIBENDOU RICHARDSON, demands a jury  
9 trial in this case.  
10

11 **CERTIFICATION PURSUANT TO L.CIV.R.11.2**

12 I hereby certify pursuant to Local Civil Rule 11.2 that this matter in controversy is not  
13 subject to any other action pending in any court, arbitration or administrative proceeding.  
14

15  
16 RESPECTFULLY SUBMITTED,

17 DATED: 06/20/11

KIMMEL & SILVERMAN, P.C.

18 By: /s/ Amy L. Bennecoff

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